FEDERAL MARITIME COMMISSION

WASHINGTON, D. C.

March 31, 2006

DOCKET NO. 06-03

PREMIER AUTOMOTIVE SERVICES, INC.

v.

ROBERT L. FLANAGAN AND F. BROOKS ROYSTER, III

RULING ON MOTION TO DISMISS

INTRODUCTION

On January 31, 2006 the complainant, Premier Automotive Services, filed the complaint that gave rise to this action. This pleading was filed not only as a privately initiated complaint but, in the alternative, as notice of information of a possible violation of the Shipping Act (46 U.S.C. App. § 1701 et seq.). Premier requested that, in addition to adjudicating the complaint, the Commission investigate the alleged violation and seek injunctive relief in federal court. On February 21, 2006 the respondents, officials of the Maryland state government, filed a motion to dismiss the complaint and a response to the request for an investigation. On March 16, 2006 the complainant filed its opposition to the motion to dismiss.

This ruling on the respondent state officials' motion to dismiss only deals with this matter in its character as a complaint under Section 11(a) of the Shipping Act (46 U.S.C. App. §1710(a)). The authority to order an investigation or seek injunctive relief in federal court rests with the Commission and not with one of its Administrative Law Judges. Accordingly, the parts of the complaint that go beyond the administrative adjudicatory process to request that the Commission initiate litigation or an investigation are beyond the scope of this decision.

BACKGROUND

The facts stated in the complaint are accepted as true for the purposes of this motion. All exhibit numbers below refer to the exhibits attached to Premier's complaint.

Premier is a tenant of the Maryland Port Administration (MPA), occupying a facility in the Port of Baltimore designated as Lot 90. It has occupied Lot 90 since 1964. The most recent lease expired in June, 2002 and since then Premier has been occupying Lot 90 on a month-to-month tenancy.

In July 2002 the MPA proposed a new lease (Exhibit 3). Premier rejected this proposed lease, which it characterizes as "commercially untenable, irrational and confiscatory."

On February 9, 2004 the MPA sent a letter (Exhibit 5) stating that negotiations had continued since the lease expired and had not been successful. The letter further stated the view that "it was in the best interest of both parties to discontinue any long-term lease provisions and issue a month-to-month lease for the premises." Premier deemed the proposed month-to-month lease unacceptable because it provided no security for the lease term.

On April 9, 2004 the MPA proffered a three-year lease with two one-year renewal options (Exhibit 6). This proposed lease had terms regarding required vehicle throughput guarantees and potential relocation that Premier found oppressive and burdensome. Premier rejected this proposed lease.

The leases of various other tenants in the Port of Baltimore are attached to the complaint (Exhibits 10, 20, 21, 22, 23, and 24). In the complaint Premier has identified aspects of those leases that are more favorable than the comparable provisions of the leases that were proffered to it.

DISCUSSION

State sovereign immunity before federal administrative agencies

The Eleventh Amendment to the Constitution provides that "[t]he judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state." The extent of the sovereign immunity of the states has been a subject of numerous Supreme Court cases, recently including *Federal Maritime Commission v. South Carolina State Ports Authority*, 535 U.S. 743, in which the immunity of a state was held to apply to a privately-initiated complaint before the Commission. In the present complaint Premier acknowledges that the State of Maryland's sovereign immunity would bar adjudication of a complaint against the MPA itself. Accordingly, Premier has filed the complaint against officials of the state government under the doctrine of *Ex parte Young*, 209 U.S. 123 (1908).

In *South Carolina State Ports Authority* the Supreme Court held that the Federal Maritime Commission could not adjudicate the private complaint that had been brought before it, but noted that the Commission:

> remains free to investigate alleged violations of the Shipping Act, either upon its own initiative or upon information supplied by a private party, see, *e.g.*, 46 CFR §502.282 (2001), and to institute its own administrative proceeding against a state-run port, see 46 U. S. C. App. §1710(c) (1994 ed.); 46 CFR §502.61(a) (2001). Additionally, the Commission "may bring suit in a district court of the United States to enjoin conduct in violation of [the Act]." 46 U. S. C. App. §1710(h) (1). 535 U.S. at 768

On remand in *South Carolina State Ports Authority* the Commission anticipated the possibility of a complaint against state officials by noting that the Supreme Court's decision did not address whether the *Young* doctrine applied to Shipping Act adjudications. The Commission went on to observe that "it may be that a future privately-initiated complaint proceeding against the directors of a state run port, rather than against the port, would be permissible. Such a determination as to whether the Shipping Act allows such a proceeding, however, will have to wait for a case in which the issue is raised." *South Carolina Maritime Services v. South Carolina State Ports Authority*, 29 SRR 806 (2002). The issue has now been raised.

Ex parte Young as an exception to state sovereign immunity

In *Young* the State of Minnesota enacted a railroad rate-setting scheme that was asserted by private parties to violate the U.S. Constitution. Action was brought to enjoin the state Attorney General from enforcing the provisions of the state law. The Supreme Court upheld the Circuit Court's exercise of jurisdiction over the Attorney General.

The Supreme Court has noted that the *Young* doctrine rests on a fictional distinction between the officials and the state. "When suit is commenced against state officials, even if they are named and served as individuals, the State itself will have a continuing interest in the litigation whenever state policies or procedures are at stake." *Idaho v. Coeur D'Alene Tribe*, 521 U.S. 261 (1997).

The availability of a *Young* action has been decided on a case by case basis. *Coeur D'Alene Tribe.* Such an action is limited to suits for prospective relief rather than for money damages. The Supreme Court has held that "when the action is in essence one for the recovery of money from the state, the state is the real, substantial party in interest and is entitled to invoke its sovereign immunity from suit even though individual officials are nominal defendants." *Ford Motor Company v. Department of the Treasury of Indiana*, 323 U.S. 459, 464 (1945).

Another limitation on the availability of *Young* to limit the sovereign immunity of a state was the property interest involved in *Coeur D'Alene Tribe.* That case was an action by the tribal government to quiet title over the banks and submerged lands of Lake Coeur D'Alene. A decision for the tribe would have divested the State of Idaho not only of ownership, but of sovereignty over the lands involved. The Court held that the state's sovereign immunity barred the suit.

The property interest in this case involves the decision to lease a parcel of the state's property. That is not as fundamental a real estate issue as that of state versus tribal sovereignty in *Coeur D'Alene Tribe*, but it is a substantial interest of the state. The Port of Baltimore is one of the nation's major seaports, and is an important resource of the State of Maryland. A decision for the complainant would not cede either sovereignty or title over Lot 90. However, by directing that the state enter into a long-term lease for a particular piece of waterfront property with one tenant rather than another, and on certain terms desired by that tenant, it would interfere significantly in the state's exercise of its discretion in managing this valuable asset.

The question of the discretion of the state official being sued has been a factor in this area of the law since the *Young* case itself. In that decision the Court stated:

> In our view there is no interference with [the state Attorney General's] discretion under the facts herein. There is no doubt that the court cannot control the exercise of the discretion of an officer. It can only direct affirmative action where the officer having some duty to perform not involving discretion, but merely ministerial in its nature, refuses or neglects to take such action. In that case the court can direct the defendant to perform this merely ministerial duty. *Board of Liquidation v. McComb*, 92 U.S. 531, 541. The general discretion regarding the enforcement of the laws when and as he deems appropriate is not interfered with by an injunction which restrains the state officer from taking any steps towards the enforcement of an unconstitutional enactment, to the injury of complainant. In such case no affirmative action of any nature is directed, and the officer is simply prohibited from doing an act which he had no legal right to do. An injunction to prevent him from doing that which he has no legal right to do is not an interference with the discretion of an officer. 209 U.S. 123, 158-159.

Relief sought by the complainant

In its character as a Section 11(a) matter, Premier's complaint requests that the Commission "direct the Respondents to offer Premier a new lease for Lot 90 on the commercially reasonable terms on which Premier's competition at the Terminal has been given leases; [and] award Premier reparations for the Respondents' violations in such a sum as is sufficient to compensate Premier for its actual injuries caused by the Respondent's illegal, discriminatory practices." The complaint also seeks costs, attorney's fees, and pre- and post-judgment interest.

The relief sought in *Young* was essentially negative--to prevent the Attorney General from enforcing the state law. In *Coeur D'Alene Tribe* the relief sought was an affirmative act, i.e. the transfer of title and sovereignty over the disputed lands, but not one involving exercise of discretion by the state officials. If the tribal government had prevailed the State would have been required to perform the ministerial act of conveying title, and prohibited from exercising jurisdiction over the disputed lands, but the federal courts would not have required any discretionary decision making by state officials.

In the present case there is a negotiating history going back more than three years. In that time Premier has rejected three proposed leases. For purposes of this motion there is no reason to

dispute Premier's assertion of the objectionable nature of the leases. As business decisions the rejection of these leases may well have been entirely sound for the reasons that Premier gives. Before we can reach the merits of the complaint, however, we must resolve the jurisdictional issue of sovereign immunity, and the involved negotiating history points up vividly the complexity of the discretionary state government processes that the Commission is being asked to supervise in this case.

In other *Young* actions it has been clear what action or non-action would be required of the defendant state officials if the plaintiffs prevailed. Actions that are illegal under federal law are prevented or non-discretionary ministerial acts are required. In this case we have only the almost infinitely elastic term "commercially reasonable" to define what state officials are to be required to do. In seeking to require the MPA to proffer a "commercially reasonable" lease, Premier has cited provisions it finds undesirable in the three rejected lease offers, and others that it finds desirable in the leases of six other tenants of the MPA.

A decision for Premier would require the MPA to offer a new lease. If that proposal were unacceptable to Premier the Commission (or the Administrative Law Judge) would presumably need to determine whether that offer was commercially reasonable and, if it was not, to require the MPA to make a new, more favorable lease offer. The process would need to be repeated as often as necessary until the parties agreed or the Commission decision-maker was satisfied that the most recent rejected lease offer was commercially reasonable.

The oversight by the Commission that this complaint seeks would necessarily be very detailed, and would potentially be ongoing through many cycles of offer and counter-offer. Such a degree of complexity in fashioning a remedy is incompatible with the application of the *Young* doctrine. More fundamentally, that degree of intervention in the discretionary decisions involved in implementing a state's interest in the management of a seaport is incompatible with the sovereign dignity of the states that the Supreme Court identified as fundamental to Eleventh Amendment jurisprudence in *South Carolina State Ports Authority*.

ORDER

The privately initiated complaint is dismissed. The complainant's request that the Commission initiate an investigation or an action in federal court is, as noted above, not within the authority of an administrative law judge.

K A Krantz

Kenneth A. Krantz
Administrative Law Judge